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February 27, 2023  
*VIA ECF*

The Honorable Sarah Netburn,  
United States District Court  
Southern District of New York  
40 Foley Square, Room 430  
New York, New York 10007

**Re: *Nike, Inc. v. StockX LLC*, No. 22 CV 00983 (VEC) (SN) (S.D.N.Y.) – Joint Request for Extension of the Discovery Schedule**

Dear Judge Netburn:

Plaintiff Nike, Inc. (“Nike”) and Defendant StockX LLC (“StockX” and together with Nike, the “Parties”) respectfully request a three-week extension of the discovery schedule for good cause shown pursuant to Paragraph 9 of the Court’s Civil Case Management Plan and Scheduling Order (Dkt. No. 25) and Section I(G) of the Court’s Individual Practices in Civil Cases.

The deadline to complete fact discovery is currently set for **February 28, 2023**, with affirmative expert reports due **March 13, 2023**, rebuttal expert reports due **April 13, 2023**, and expert witness depositions to be scheduled between **April 14** and **June 13, 2023**. (Dkt. No. 85.) Expert discovery is due to close on **June 13, 2023**. *Id.*

While the Parties are pleased to report that they have made significant progress toward completing fact discovery, several discovery disputes remain outstanding. These include disputes related to recent depositions and concern issues including the sufficiency of 30(b)(6) testimony and potential gaps in document productions for which the Parties still must meet and confer. As such, the Parties agree that additional time is necessary to resolve these outstanding discovery disputes, including any resulting production of additional documents. The Parties hope to resolve their remaining disputes swiftly and without the need for Court intervention, but if such intervention is required the Parties will promptly follow the Court’s procedures with regard to the same.

To resolve the remaining disputes and fully complete discovery on all of the claims and defenses at issue, the Parties respectfully submit that good cause exists for modifying the Scheduling Order by extending the deadline for the completion of all fact discovery from **February 28, 2023**, to **March 21, 2023**, and extending the deadline for the completion of all expert discovery from **June 13, 2023**, to **July 14, 2023**.<sup>1</sup> Attached as Exhibit A is a proposed order

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<sup>1</sup> Under Rule 16(b)(4), a scheduling order “may be modified only for good cause and with the judge’s consent.” Fed. R. Civ. P. 16(b)(4). Similarly, I(G) of the Court’s Individual Practices in Civil Cases requires that good cause be shown where a request for an extension of time is

amending the applicable Civil Case Management Plan and Scheduling Order to reflect the adjusted deadlines that have been agreed to by both parties.<sup>2</sup>

This is the Parties' third request for an extension of the discovery schedule. The Parties' first joint request for an extension of the discovery schedule was granted by Judge Caproni on September 16, 2022 (Dkt. No. 63), and the Parties' second joint request for an extension of the discovery schedule was granted by the Court on December 15, 2022. (Dkt. No. 85.) This case has not yet been set for trial and no deadlines have been set for motions for summary judgment or to exclude expert testimony.

The Parties thank the Court for its attention to this matter.

Respectfully submitted,

/s/ Tamar Y. Duvdevani

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submitted to the Court within 48 hours of a deadline. Individual Practices in Civil Cases, Sarah Netburn, United States Magistrate Judge (Rev. June 28, 2021), I(G). The "good cause" inquiry is primarily focused upon the diligence of the movant. *See Parker v. Columbia Pictures Indus.*, 204 F.3d 326, 340 (2d Cir. 2000) ("[A] finding of 'good cause' depends on the diligence of the moving party.") (citations omitted). "To satisfy the good cause standard 'the party must show that, despite its having exercised diligence, the applicable deadline could not have been reasonably met.'" *Enzymotec Ltd. v. NBTY, Inc.*, 754 F. Supp. 2d 527, 536 (E.D.N.Y. 2010) (quoting *Sokol Holdings, Inc. v. BMD Munai, Inc.*, 2009 WL 2524611, at \*7 (S.D.N.Y. Aug. 14, 2009)).

<sup>2</sup> The Parties also intend to request a corresponding three-week adjournment of the **March 17, 2023**, status conference before Judge Caproni to **April 7, 2023**.

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